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## UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

NO. 03 CV 12307 RGS

JOSEPH CHRISTOFORO,  
Plaintiff

-VS-

JULIO LUPO, FRANK G. COUSINS,  
JR., INDIVIDUALLY AND IN HIS  
CAPACITY AS ESSEX COUNTY SHERIFF,  
and CERTAIN UNKNOWN INDIVIDUALS,  
Defendants

## DEPOSITION OF JOSEPH CHRISTOFORO

Volume II

Deposition taken at the law offices  
of Merrick, Louison & Costello, 67 Batterymarch  
Street, Boston, Massachusetts, on Thursday,  
May 19, 2005, commencing at 10:20 a.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.  
ONE STATE STREET, BOSTON, MASSACHUSETTS 02109  
617-742-6900

## APPEARANCES:

## For the Plaintiff:

Gilmore, Rees, Carlson & Cataldo, P.C.  
EDWARD J. MCCORMICK, III, ESQ.  
1000 Franklin Village Drive  
Franklin, Massachusetts 02038

## For the Defendant Julio Lupo:

Monahan & Padellaro  
By JOSEPH F. HODAPP, ESQ.  
43 Thorndike Street  
Cambridge, Massachusetts 02141

## For the Defendant Frank Cousins:

Merrick, Louison & Costello  
By STEPHEN C. PFAFF, ESQ.  
67 Batterymarch Street  
Boston, Massachusetts 02110

Court Reporter: Anne F. Penn, C.S.R., R.P.R.

P-R-O-C-E-E-D-I-N-G-S

JOSEPH CHRISTOFORO

having been previously duly sworn, was deposed  
and testified as follows:

E-X-A-M-I-N-A-T-I-O-N

BY MR. HODAPP:

Q This is the resumption of a deposition begun on  
Monday, May 16th. Good morning, Mr. Christoforo.  
A Good morning.  
Q Could you please describe the events of December  
23, 2002.  
A Sure. I went to work that morning as, you know,  
and I had a different job that morning. And I was  
performing my work detail. Would you like me to  
start in the morning?  
Q Please.  
A And while I was performing one of my new duties  
for that morning, Julio had come into work, was  
talking to big Paul -- I don't know his last  
name -- about something. I didn't hear what they  
were talking about; but he did glance over and  
look at me after they had finished their  
conversation.

And when they were done, I was still doing my

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1 Q How did your day begin? What were you working on  
 2 when you first showed up?  
 3 A Emptying barrels.  
 4 Q How long did that take you?  
 5 A I don't recall the amount of time.  
 6 Q What did you do after that?  
 7 A Cleaned floors.  
 8 Q Okay. What did you do after that?  
 9 A I had a computer class.  
 10 Q What time was the computer class scheduled for?  
 11 A I don't recall the time.  
 12 Q Was the computer class held at the same time each  
 13 day?  
 14 A No, sir.  
 15 Q How many days a week do you go to computer class?  
 16 A I don't remember, sir.  
 17 Q Did you go to your computer class?  
 18 A Yes, sir.  
 19 Q Okay. Did you attend the class that day?  
 20 A No.  
 21 Q Why not?  
 22 A It was canceled.  
 23 Q Okay. Did you go directly back from the class to  
 24 the kitchen?

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1 A Yes, sir.  
 2 Q Okay. And what did you do for work when you got  
 3 back to the kitchen from the computer class that  
 4 was canceled?  
 5 A I was going to go back to my duties I'd been doing  
 6 that morning.  
 7 Q Okay. Something happened that changed your plan  
 8 of going back to your prior duties?  
 9 A Yes, sir.  
 10 Q What happened?  
 11 A Julio told me to get back to the line.  
 12 Q Okay. Had you been on the line before leaving to  
 13 go to your computer class?  
 14 A Yes, sir.  
 15 Q Was the computer class scheduled for 9 a.m.?  
 16 A I don't recall.  
 17 Q How long were you back at the serving line before  
 18 the incident occurred?  
 19 A I don't recall the exact amount of time.  
 20 Q I don't expect you to know exactly, approximately  
 21 how long were you back at the table for before the  
 22 incident occurred?  
 23 A I can't give you that approximate time.  
 24 Q More than an hour?

1 A Counsel, I don't remember the time.  
 2 Q What did you do when you got back to the service  
 3 line from the computer class that was canceled?  
 4 A Can you say that again?  
 5 Q What did you do when you got back to the service  
 6 line after having returned from your canceled  
 7 computer class?  
 8 A I didn't go back to the service line.  
 9 Q Where did you go when you came back to the  
 10 kitchen?  
 11 A I was going back to do my other job.  
 12 Q Did you go and do another job?  
 13 A No.  
 14 Q What did you do?  
 15 A Julio told me to drop what I was doing and get to  
 16 the line.  
 17 Q What were you doing that he asked you to drop?  
 18 A I was starting to get a broom to sweep floors.  
 19 Q Okay. So you never did do anything other than  
 20 return to the service line when you returned,  
 21 isn't that true?  
 22 A I didn't -- no.  
 23 Q It's not true?  
 24 A Say that again.

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1 Q Did you go back to the service line when you came  
 2 back from the computer class?  
 3 A Not right away, no.  
 4 Q Okay. How much time did you spend doing other  
 5 things before you went back to the service line?  
 6 A Nothing, none, about a minute.  
 7 Q Okay. You're back on the service line, did you  
 8 have any discussion while you were at the service  
 9 line with any of the individuals before anything  
 10 occurred with regard to Julio Lupo?  
 11 A Yes.  
 12 Q Okay. What were you talking about with the other  
 13 inmates?  
 14 A I asked what a melongena was.  
 15 Q Where had you heard that?  
 16 A From what Julio said.  
 17 Q When?  
 18 A A minute before, maybe less.  
 19 Q And that's when the incident you described earlier  
 20 when Julio came over to the serving line and made  
 21 a remark in Officer Smith's direction about a  
 22 melongena?  
 23 A Yes, sir.  
 24 Q Is that who he said it to, Officer Smith?